Hatfield Tile and Marble, Inc. *and* Union No. 77 of N.J. Bricklayers and Allied Craftsman, AFL–CIO. Case 22–CA–19025

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Upon a charge filed by the Union March 4, 1993, the General Counsel of the National Labor Relations Board issued a complaint against Hatfield Tile and Marble, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint,[1] the Respondent failed to file an answer.

On July 15, 1993, the General Counsel filed a Motion for Summary Judgment with the Board. On July 21, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that by letter dated June 2, 1993, the time for filing an answer was extended to June 9, 1993, and the Respondent was notified that failure to file an answer by close of business on that date would result in the filing of a Motion for Summary Judgment.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

[1] The charge was served by certified mail on the Respondent on March 5, 1993, but was subsequently returned unclaimed. The charge was again served by certified mail on March 30, 1993, but was also returned unclaimed. Service of these documents was properly accomplished by deposit in the mail to the Respondent's last known address. *Mondie Forge Co.*, 309 NLRB No. 82 fn. 1 (Nov. 25, 1992). A respondent's failure or refusal to claim certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, with an office and place of business in Hatfield, Pennsylvania, has been engaged in the installation of tile and marble. During the calendar year ending December 31, 1992, the Respondent, in conducting its business operations, provided services in excess of $50,000 for Lott Constructors, Inc., an enterprise within the State of Pennsylvania. At all material times, Lott Constructors, Inc., a corporation with an office and place of business in Harleysville, Pennsylvania, has been engaged as a general contractor. During the calendar year ending December 31, 1992, Lott Constructors, Inc., in conducting its business operations described above, performed services valued in excess of $50,000 in States other than the State of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times the Tile Contractors Association of Northern New Jersey, Inc. (the Association) has been an organization composed of various employers, one purpose of which is to represent its employer-members in negotiating and administering collective-bargaining agreements with various labor organizations, including the Union. About April 29, 1991, the Association and the Union entered into a collective-bargaining agreement (the Association Agreement) effective from April 29, 1991, through May 1, 1994. About January 26, 1993, the Respondent entered into the Association Agreement which at all material times bound the Respondent to the terms and conditions of employment of the Association Agreement.

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees employed by Respondent performing tile work.

About January 26, 1993, the Respondent, an employer engaged in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of the unit by entering into a collective-bargaining agreement with the Union, the Association Agreement, without regard to whether the majority status of the Union has ever been established under the provisions of Section 9 of the Act.

Since on or about January 26, 1993, the Respondent unilaterally failed to make contractually required wage and fringe benefits payments. These subjects related to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in these acts and conduct without prior notice to the Union and without having obtained the Union's consent.

CONCLUSION OF LAW

By unilaterally failing to make the contractually required wage and fringe benefits payments on behalf of its unit employees, the Respondent has refused to bargain collectively with the Union as the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(5) and (1), 8(d), and 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required wage and fringe benefits payments, we shall order the Respondent to make whole its unit employees by making all payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that the Respondent, Hatfield Tile and Marble, Inc., Hatfield, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Union No. 77 of N.J. Bricklayers and Allied Craftsman, AFL–CIO, by failing to make contractually required wage and fringe benefits payments for its unit employees. The unit includes:

> All employees employed by Respondent performing tile work.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make unit employees whole for any loss of benefits or other expenses suffered as a result of the Respondent's failure to make the contractually required wage and fringe benefits payments for its unit employees since January 26, 1993.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in Hatfield, Pennsylvania, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. August 26, 1993

James M. Stephens,	Chairman
Dennis M. Devaney,	Member
John Neil Raudabaugh,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain with Union No. 77 of N.J. Bricklayers and Allied Craftsman, AFL–CIO by failing to make contractually required wage and fringe benefits payments for our unit employees. The unit includes:

All employees employed by us performing tile work.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make our unit employees whole for any loss of benefits or other expenses suffered as a result of our failure to make contractually required wage and fringe benefits payments since January 26, 1993.

HATFIELD TILE AND MARBLE, INC.